ORIGINAL

Before the
Federal Communications Commission
Washington, DC

FILED/ACCEPTED
MAR - 5 2007
Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
Petitions of the Verizon Telephone Companies	)	WC Docket No. 06-172
for Forbearance Pursuant to 47 U.S.C. § 160(c)	)	
in the Boston, New York, Philadelphia,	)	
Pittsburgh, Providence and Virginia Beach	)	
Metropolitan Statistical Areas	)	

[redacted]

COMMENTS OF COX COMMUNICATIONS, INC.

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March 5, 2007

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SUMMARY¶

Verizon's petitions for forbearance in the Virginia Beach-Norfolk-Newport News, Virginia-North Carolina ("Virginia Beach") and Providence- New Bedford-Fall River, Rhode Island-Massachusetts ("Providence") MSAs (the "Petitions") should be dismissed. The Petitions provide no evidence that would permit the Commission to conclude that Verizon has satisfied the statutory forbearance criteria and rely on information compiled in violation of Section 222 of the Act. Even if the Commission does not dismiss the Petitions, Verizon's requests for forbearance should be denied.

The Petitions Should Be Dismissed

The Petitions are based primarily on the premise that declines in Verizon's market share in the Virginia Beach and Providence MSAs are sufficient evidence to justify the removal of Verizon's regulatory obligations. The Commission clearly rejected this approach in the *Omaha Forbearance Order* and the *Anchorage Forbearance Order*, requiring instead a granular analysis of competitive facilities deployment on a wire-center-by-wire-center basis. Verizon has provided no useful information that would help the Commission undertake such an inquiry. Instead, Verizon has provided a hodgepodge of market-level, and even regional and national, competition data that cannot satisfy the standards the Commission has applied to forbearance petitions. Verizon has therefore failed to make even a *prima facie* showing of competition sufficient to justify forbearance, and the Petitions therefore should be dismissed.

Verizon's Petition also should be dismissed because it relies on E911 information culled from the databases it administers. Gathering and using this information for purposes other than provisioning E911 services is contrary to the carrier protections built into Section 222 of the Act and Verizon's interconnection agreements with competitive carriers. This issue has been fully

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briefed, and Cox only briefly mentions it in these comments, but Verizon's reliance on this information, which in any case is highly unreliable, is improper and forms an independent basis for dismissing the Petitions.

The Individual Requests for Forbearance Should Be Denied

If the Commission does elect to consider the Petitions on the merits, they should be denied. In the first place, Verizon does not specify the relief it seeks with the level of specificity the Commission demanded in the *Omaha Forbearance Order*, saying only that it seeks relief similar to that granted Qwest. The Commission therefore should construe the Petitions narrowly to request relief only from the rules Verizon specifically enumerates. For example, the Petition asks from relief only from the loop and transport unbundling obligations included in Section 251(c)(3) of the Act. Regardless of the outcome on that request, the Commission should clarify that all Verizon's other Section 251(c) obligations remain in force.

The Commission also should reject Verizon's efforts to rely on evidence regarding competitors other than facilities-based telecommunications providers and cable operators. Verizon claims that a whole range of competitors, from wireless providers to systems integrators now are competing with Verizon for local telephone customers. In fact, Verizon is heavily invested in much of its "competition" from wireless providers. Moreover, it provides no concrete evidence of the impact any of these services actually has on the competitive landscape in Virginia Beach or Providence. The Commission therefore should narrow the evidence it will consider to granular evidence regarding facilities-based providers like cable operators and certificated competitive LECs.

Once the Petitions are narrowed to only the relief Verizon specifically seeks, it is clear that neither the Providence nor the Virginia Beach Petition can be granted. None of Verizon's evidence addresses its status as the essential ubiquitous interconnecting carrier and none of it

attempts to show that removing Verizon's wholesale regulatory burdens will not harm competitive carriers in the markets.

Verizon's market-specific evidence in the Providence and Virginia Beach MSAs focuses almost exclusively on competition from Cox (and in the Massachusetts portion of the Providence MSA, Comcast as well), but that information consistently overstates the number of customers and the geographic areas Cox actually serves. Verizon's evidence also fails to specify precisely where competitive facilities are deployed, *i.e.* locations where the Commission should grant forbearance under the standards established by the *Omaha Forbearance Order* and the *Anchorage Forbearance Order*. At bottom, the Petitions simply provide no basis for grant and should be denied.

The only relief Verizon seeks to which Cox does not object is its request for nondominant treatment at the federal level for mass market services. To the extent the Commission considers that request, however, it should be treated as a request for declaratory ruling rather than for forbearance, and Verizon should be required to make the necessary showings under existing nondominance precedent.

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COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc., on behalf of its affiliates Cox Virginia Telcom, Inc. and Cox Rhode Island Telcom, L.L.C. (collectively, "Cox"), hereby submits these comments in response to the petitions for forbearance submitted by Verizon Communications ("Verizon") in the above-referenced proceeding for the Providence, Rhode Island and Virginia Beach, Virginia Metropolitan Statistical Areas (the "Providence MSA" and the 'Virginia Beach MSA," respectively).[1]

I. Introduction

Cox is the leading competitive provider of facilities-based local telephone service in the United States, with more than two million residential lines and 180,000 business customers in

[1] Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Providence Metropolitan Statistical Areas, WC Docket No. 06-172, filed September 6, 2006 (the "Providence Petition"); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Virginia Beach Metropolitan Statistical Area, WC Docket No. 06-172, filed September 6, 2006 (the "Virginia Beach Petition") (collectively, the "Petitions"). *See also* Wireline Competition Bureau Grants Extension of Time to File Comments on Verizon's Petitions for Forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas, *Public Notice*, WC Docket No. 06-172, DA 06-2057 (released October 18, 2006). These comments respond only to the Petitions. Because Verizon's separate forbearance petitions for the Boston, New York,

service. Cox now provides local residential and business telephone service in each of its thirty-five markets across eighteen states. Cox's service areas include parts of the Virginia Beach and Providence MSAs.[2] In Virginia Beach and Providence, Cox's facilities-based telephone services include a mixture of traditional circuit-switched and packet-switched offerings for both residential and business customers.[3] Cox relies chiefly on its own network to compete with Verizon, and it has been very successful in bringing facilities-based competition to the Providence and Virginia Beach MSAs. Indeed, Cox's success in these two markets forms almost the sole basis for the Petitions.

Verizon seeks "substantially the same regulatory relief the Commission granted in the *Omaha Forbearance Order*."[4] Although Verizon does not spell out what it means by this formulation, it enumerates in a footnote the FCC rules and statutory sections that it asks the Commission to cease applying.[5] To the extent Verizon's request can be deciphered, Verizon appears to ask the Commission to forbear from enforcing: (1) the loop and transport unbundling regulations the Commission enacted pursuant to 47 U.S.C. § 251(c), including 47 C.F.R.

Philadelphia, and Pittsburgh markets are essentially the same, some of Cox's arguments also may have relevance to these other filings.

[2] Cox Rhode Island Telcom, L.L.C. and Cox Virginia Telcom, Inc. are indirect, wholly-owned subsidiaries of Cox Communications, Inc., and are the operating entities that hold the state certificates to provide telephone service in Rhode Island and Virginia, respectively.

[3] Cox's packet-switched voice service uses Internet Protocol but operates over facilities under Cox's control, not over the Internet.

[4] Providence Petition at 1 (citing Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, *Memorandum Opinion and Order*, 20 FCC Rcd 19415 (2005) ("*Omaha Forbearance Order*")); Virginia Beach Petition at 1 (citing same).

[5] Providence Petition at n.3; Virginia Beach Petition at n.3.

§ 53.319(a), (b), and (e); and (2) a number of dominant carrier and Computer III requirements.[6] Verizon appears to seek loop and transport unbundling relief for both mass-market and enterprise services, but to seek a determination of non-dominance only for mass-market services. The essence of Verizon's argument is that the requested relief is justified because Cox (along with Comcast in the Massachusetts area of the Providence MSA) has gained a significant share of the residential and business markets for telephone service in the Providence and Virginia Beach MSAs. To be sure, and as further discussed below, the Petitions purport to rely on competition from a number of sources, but the only competition for which it provides meaningful quantification in the Virginia Beach MSA is that provided by Cox and, in the Providence MSA, that provided by Cox and Comcast.

As in Omaha, however, Cox's competitive success in Virginia Beach and Providence has not affected the need for the protections afforded by the Communications Act, particularly the network-access guarantees of Section 251.[7] While facilities-based providers have more limited needs for access to incumbent LEC networks than competitors that rely on unbundled network elements or resale, certain incumbent LEC obligations remain essential to facilities-based competition.[8] These obligations include the duties to negotiate in good faith; and to provide interconnection at any technically feasible point on reasonable, cost-based and non-discriminatory terms, including transit provided without unreasonable restrictions at cost-based rates; collocation; access to operational support system (OSS) interfaces and databases for E911, customer service record information, and directory listing information; unbundled access to

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[6] *Id.*

[7] *Omaha Forbearance Order*, 20 FCC Rcd at 19456.

[8] *See* Comments of Cox, WC Docket No. 04-223 (filed August 24, 2004); *see also, e.g.*, Comments of Cox, IP-Enabled Services, WC Docket No. 04-36 (filed May 28, 2004).

inside wire subloop facilities in multi-tenant environments ("MTEs"); and the ability to seek redress for ILEC misbehavior before state public utility commissions. If the Commission does not require Verizon to continue meeting facilities-based competitors' needs in these areas, Verizon will have the power to leverage its ubiquitous network to stop emerging competition in its tracks.

The Commission's task is to ensure that its disposition of the Petitions preserves an environment that will allow competition to continue growing under free market conditions.[9] Cox recognizes, however, that existing competition may justify granting Verizon some regulatory relief in the Virginia Beach and Providence MSAs. Cox does not object, for example, to relieving Verizon of federal dominant carrier regulation for mass-market services consistent with the Commission's treatment of Qwest in the *Omaha Forbearance Order*.[10]

The Petitions utterly fail, however, to justify granting Verizon relief from any of its Section 251(c) obligations.[11] Verizon has not met its burden of providing particularized

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[9] Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area, WC Docket No. 05-281, FCC 06-188 ¶ 9 (released January 30, 2007) ("the Commission's analysis results in granting the incumbent LEC relief from its unbundling obligations where the level of facilities-based competition ensures that market forces will protect the interests of consumers and that Section 251(c)(3) unbundling regulation is, therefore, unnecessary and not in the public interest.") (the "*Anchorage Forbearance Order*").

[10] 20 FCC Rcd at 19424-25.

[11] Because Verizon makes little effort to clearly explain the relief it seeks in this proceeding, it is unclear whether Verizon seeks forbearance for all its Section 251(c) obligations or only those obligations to provide unbundled loops, subloops, and transport. Providence Petition at n.3; Virginia Beach Petition at n.3. In the *Omaha Forbearance Order*, the Commission denied Qwest's Petition to the extent it sought relief from any rule or statute that Qwest did not specifically identify. 20 FCC Rcd at 19425. The Commission should follow the same course in this case and consider only Verizon's specific requests for forbearance from enforcement of Sections 51.319(a),(b), and (e) of the Commission's rules. 47 C.F.R. § 51.319(a), (b), (e). The Commission should state clearly that all of Verizon's other Section 251(c) obligations remain in place.

information demonstrating that actual facilities-based competitors are capable of serving customers in the entire Virginia Beach and Providence MSAs or in any specific parts of those markets. Verizon claims only that competitors are present in these service areas and that some percentage of its former customers now take service from competitive providers; it provides no evidence of where competitive services are and are not available. This is not enough to meet the standards adopted in the *Omaha Forbearance Order* and *Anchorage Forbearance Order*, which granted forbearance only upon a showing that competitors were actually capable of offering service to a threshold percentage of customers in individual wire centers in the Omaha MSA.[12] Verizon makes no effort to make any such showing, relying solely on its competitors' – mainly Cox's – market presence and market share.

Moreover, Verizon has made no effort to show why the competitive climates in Virginia Beach and Providence justify the particular relief Verizon has requested. In the *Omaha Forbearance Order*, the Commission separately analyzed each individual forbearance request to ensure that the standards of Section 10 of the Act were met. The Commission concluded that the question of whether existing competition satisfies the forbearance criteria requires an analysis of whether competition could flourish if each particular forbearance request were granted. That is why the Commission granted Qwest forbearance from its obligations to provide unbundled loops and transport for mass market services, but denied Qwest's bid for relief from its other Section 251(c) obligations.[13] Similarly, in the *Anchorage Forbearance Order*, the Commission granted the incumbent LEC (ACS of Anchorage, Inc., hereinafter "ACS") relief from its loop unbundling

[12] *Omaha Forbearance Order*, 20 FCC Rcd at 19438-39, ¶ 50, n.129; *Anchorage Forbearance Order*, ¶ 12.

[13] *Omaha Forbearance Order*, 20 FCC Rcd at 19456.

obligations but denied forbearance for inside wire subloops and NIDs necessary to service in MTEs because ACS failed to provide evidence that competitive conditions justified relaxation of that requirement.[14]

Verizon makes no attempt to show that each of its requests satisfies the Section 10 criteria, instead arguing that the general competitive conditions in the Providence and Virginia Beach MSAs satisfy the forbearance test for all of its requests. For instance, though Verizon specifically requests relief from the Commission's rules requiring both unbundled loops and subloops, Verizon ignores the important differences between the competitive effects of granting relief from these separate obligations. Competitive carriers use loops and subloops to reach different kinds of customers, so forbearance from these two obligations must be analyzed separately. A facilities-based carrier like Cox, for example, has no reason to make extensive use of unbundled loops, but it needs unbundled inside wire subloops to reach customers in MTEs when it is unable to place its own facilities. As the Commission has previously noted,

> [for] all requesting carriers, especially carriers constructing facilities-based networks, the ability to access subloops at, or near, the customer's premises in order to reach the infrastructure in those premises where they otherwise would not be able to take their loop the full way to the customer, is critical.[15]

Without unbundled access, Verizon essentially could lock Cox out of every building in which it controls the inside wiring. Verizon's generic Section 10 showing makes no effort to address this distinction.

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[14] *Anchorage Forbearance Order*, ¶ 24.

[15] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978, 17190 (2003) ("*Triennial UNE Order*").

Given the obvious defects in the Petitions and Verizon's complete failure to satisfy the standards developed in the *Omaha Forbearance Order*, the Commission should deny Verizon's request for forbearance from Section 251(c) and the accompanying Commission regulations.

II. Verizon Has Not Provided Evidence That Meets the Standards Established by the *Omaha Forbearance Order* Because It Relies on the Mere Presence of Competitors.

In the *Omaha Forbearance Order*, the Commission developed the legal and analytic framework applicable to Verizon's requests for relief from Section 251 and other dominant carrier regulations. The *Omaha* framework has two key features. First, the Commission's analysis must be based on the prevailing facts and circumstances in each specific market where Verizon has requested relief, and, where appropriate, in discrete geographical portions of each market.[16] Second, each individual request for relief must be analyzed separately to determine whether Section 10(a) of the Act is satisfied.[17] Those inquiries are necessarily fact-intensive and cannot be satisfied by a generic showing that competition exists. Instead, the Commission requires Verizon to show that an analysis of the specific forbearance requests demonstrates that each regulatory requirement can be forborne for each market without harming competition, consumer protection, or the public interest.[18]

A. The Commission's Analysis Must Be Market- and Fact-Specific.

The *Omaha Forbearance Order* establishes that Verizon's Petitions must be separately analyzed on a market-by-market basis to determine whether each forbearance request merits

[16] *Omaha Forbearance Order*, 20 FCC Rcd at 19423, n.46, 19444-45.

[17] *See id.* at 19423-24.

[18] *See id.* at 1919423-24. *See also Anchorage Forbearance Order*, ¶ 31 (forbearance should be granted only where analysis at the wire center level shows that "extensive facilities-based coverage . . . [has] lessen[ed] the need for regulatory intervention.").

relief.[19] Despite the uniformity of Verizon's Petitions, the prevailing market conditions in the New York, Boston, Pittsburgh, Philadelphia, Virginia Beach, and Providence MSAs are different, and Verizon's requests must be scrutinized to determine where (if anywhere) relief is appropriate in light of the characteristics of each market. This is a fact-intensive inquiry and the Commission should require Verizon to provide the necessary factual showing to demonstrate that competition has eliminated the need for the identified regulations in each market. The Commission should reject general evidence of nationwide competition that does not illuminate the specific competitive conditions in the markets where Verizon seeks forbearance. Verizon's evidence regarding competition from wireless carriers (which is defective on a number of additional grounds discussed below) and "over-the-top" voice over IP providers consists almost entirely of speculation based on purported nationwide and statewide trends that have no relevance to the Commission's inquiry into demonstrated competition in the Virginia Beach and Providence MSAs.[20] The Commission correctly rejected this type of undifferentiated, anecdotal, and geographically irrelevant evidence of wireless competition in the Omaha proceeding, and it should reject Verizon's equally generic claims here.[21]

A market- and fact-specific approach is necessary because any facts that could justify relief from both Section 251 unbundling obligations and dominant carrier regulations are necessarily local. In the context of Section 251, Verizon must show that there are strong and

[19] *See* OFO, 20 FCC Rcd. at 19423, n.46.

[20] Virginia Beach Petition at 7-13; Providence Petition at 7-13. In fact, Verizon relies principally on the Commission's decision in the Verizon-MCI merger proceeding, which focuses on national market issues. *See* Verizon Communications, Inc. and MCI Communications, Inc., *Memorandum Opinion and Order*, 20 FCC Rcd 18433 (2005).

[21] *Omaha Forbearance Order*, 20 FCC Rcd 19452. In the *Anchorage Forbearance Order*, the Commission also rejected ACS's submission of the same type of undifferentiated wireless and voice over IP data Verizon has submitted in this case. *Anchorage Forbearance Order*, ¶ 29.

stable competitors and that those competitors can obtain necessary network facilities from providers other than Verizon. For dominant carrier regulations, Verizon must show that competitors have attained a market share sufficient to eliminate the incumbent's market power. These issues can be examined sensibly only at the local level. Evidence of local market conditions that would justify the Commission in relieving Verizon of some regulations in, for example the New York MSA, could not establish Verizon's entitlement to the same relief in the Providence or Virginia Beach MSAs. It bears repeating that evidence of national or regional trends in service offerings or consumer behavior is irrelevant to this proceeding and should be ignored.[22]

Indeed, the Commission found in the *Omaha Forbearance Order* that even market-level data is not granular enough to justify forbearance throughout a given market. In that case, the Commission granted forbearance from Qwest's unbundled loop and transport obligations only in those nine (of twenty-four) wire centers of the Omaha MSA where widespread deployment of competitive facilities was demonstrated, leaving those same regulations in place where competitive facilities were less developed.[23] The Commission reaffirmed this approach in the *Anchorage Forbearance Order*, granting relief in only five of the eleven wire centers where relief was requested.[24]

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[22] The Commission specifically noted that nationwide evidence is inappropriate because Qwest failed to provide evidence that wireless or voice over IP services are substitutes for traditional wireline telephone service. *Omaha Forbearance Order*, 20 FCC Rcd at 19452. Verizon has failed to provide any such evidence in the Petitions, relying only on vague national trends it claims suggest that an increasing number of customers may be abandoning landline service in favor of wireless and/or voice over IP. Virginia Beach Petition at 11; Providence Petition at 11.

[23] *See Omaha Forbearance Order*, 20 FCC Rcd at 19450-51 ¶ 69.

[24] *See Anchorage Forbearance Order*, ¶ 2.

Under Section 10, each of the six markets for which Verizon seeks forbearance in this proceeding demands the same level of factual inquiry and attention to detail that the Commission gave to the Omaha and Anchorage MSAs. The Commission should be certain to grant relief only in those markets or portions of markets where Verizon's showing clearly warrants it.[25]

B. The Commission Must Separately Consider Each of Verizon's Individual Forbearance Requests.

Within each market, each of Verizon's forbearance requests individually must satisfy the criteria established by Section 10 of the Act.[26] These exacting standards require particularized Commission findings that relieving Verizon of its responsibilities under existing unbundling and dominant carrier regulations will not lead to: (1) unjust or unreasonably discriminatory rates and practices; (2) inadequate consumer protections; or (3) damage to the public interest.[27]

Verizon identifies its various forbearance requests in a footnote to each of the Petitions.[28] Each Petition apparently seeks forbearance from enforcement of as many as two statutes, twenty-four sections or subsections of the Commission's rules, and the Commission's Comparably Efficient Interconnection and Open Network Architecture requirements.[29] Each of these requests must be scrutinized, individually and on a granular, market-by-market basis, to determine whether it satisfies Section 10(a) for both mass market and enterprise services.

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[25] The Comments of the Virginia State Corporation Commission (the "VSCC Comments") underscore the importance of this principle. The VSCC demonstrates that the prospects for competitive entry and survival vary considerably from the most densely populated to the least densely populated wire centers in the Virginia Beach MSA. VSCC Comments at 6-7.

[26] 47 U.S.C. § 160(a).

[27] *See id.* at § 160(a)(1)-(3).

[28] Virginia Beach Petition at 3-4, n.3; Providence Petition at 3-4, n.3.

[29] *See id.*

This claim-by-claim, market-by-market analytic framework is demanded by Section 10(a) and is consistent with the Commission's approach in the *Omaha Forbearance Order*.[30] In that case, the Commission separately analyzed Qwest's bid for forbearance from dominant carrier regulations, Section 251(c) unbundling obligations, and Section 271 checklist requirements, and, where applicable, segregated its analysis to consider separately the impact of relief on the mass market and enterprise market segments and to determine whether competition was localized to a particular part of the Omaha MSA or was present market-wide. This analysis enabled the Commission, for example, to forbear from some dominant carrier regulations for mass-market services but to recognize that Qwest had failed to meet its burden to justify forbearance from the application of those same regulations to enterprise services.[31] The Commission followed a similar approach in the *Anchorage Forbearance Order*.

Conducting the intense fact-and market-specific analysis of Verizon's requests is particularly important, given the number of forbearance requests in this proceeding and the number of high-population markets where forbearance is at stake. The facts and considerations relevant to the analysis of each of Verizon's forbearance requests necessarily will be different. For example, Verizon's requests for relief from certain dominant carrier regulations may turn primarily on whether Verizon maintains a certain level of market share, whereas its requests for network unbundling relief will stand or fall based chiefly on whether sufficient alternatives are available. As explained above, market share and the availability of substitute services are local conditions that Verizon must demonstrate separately in each market.

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[30] *Omaha Forbearance Order*, 20 FCC Rcd at 19424-25.

[31] *See id.*, 20 FCC Rcd at 19438.

III. *Verizon Has Not Met Its Burden of Proof for Forbearance from Section 251* Requirements in Virginia Beach or Providence.

The legal standards outlined above apply equally to all Verizon's forbearance requests, but Cox is chiefly concerned with Verizon's defective request for forbearance from its Section 251(c)(3) obligations in the Virginia Beach and Providence MSAs. Analysis of the Petitions under the applicable legal standards demonstrates that there is no basis for granting the requested relief. Verizon has failed to specify the relief it is requesting and, in any case, has failed to support its requests with evidence that satisfies the standards enunciated in the *Omaha Forbearance Order* and reaffirmed by the *Anchorage Forbearance Order*.

A. Verizon Fails to Specify the Relief It Seeks.

In the first place, Verizon's request for relief from its Section 251(c) obligations is too vague to be granted. The *Omaha Forbearance Order* holds that a party must identify clearly and specifically the forbearance relief it seeks or face dismissal.[32] Verizon fails to do so. Instead, Verizon mentions Section 251(c) only as part of a list of rules and statutes from which it seeks relief and asks for "substantially the same regulatory relief the Commission granted in the *Omaha Forbearance Order*."[33] The Petitions include evidence that Verizon claims should justify forbearance, but Verizon never elaborates on what it means by "substantially the same relief" or how, if at all, the unbundling relief it seeks differs from that the Commission granted to Qwest.[34] While Verizon indicates in its footnote that it seeks forbearance from portions of the

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[32] *Omaha Forbearance Order*, 20 FCC Rcd at 19424-25 & n.51 (citing Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, *Memorandum Opinion and Order*, 17 FCC Rcd 27000, 27005-06).

[33] Virginia Beach Petition at 3-4, n.3; Providence Petition at 3-4, n.3.

[34] An examination of the non-dominance relief Verizon identifies shows that it is not the same as that granted to Qwest in Omaha, so the parties and the Commission are left to fill in the blanks

Commission's UNE implementing rules,[35] *it also suggests that the Commission can forbear* entirely from enforcement of Section 251(c) because the statute has been fully implemented nationwide.[36] Verizon also fails to specify whether it is requesting relief for mass-market services, enterprise services, or both.[37] The closer the Commission looks at the Petitions, the more difficult it becomes to determine exactly what Verizon is seeking.

More problematic still, Verizon's requested relief (however construed) would not include most of the competitive protections built into the *Omaha Forbearance Order*. For instance, in Omaha, the Commission noted that Qwest still would be required to offer loops and transport pursuant to Section 271 and relied on this fact in its forbearance analysis.[38] As the Virginia State Corporation Commission (the "VSCC") has described, this protection would be absent in those portions of the Virginia Beach MSA served by Verizon South. In those areas, Verizon is the successor to GTE, which was not a Bell Operating Company and therefore was not covered by Section 271.[39] In many cases the Verizon South territories are the least populous areas in the MSA, making competitive entry difficult even with Section 251 in full force. The elimination of loop and transport unbundling in those areas, without the additional protection afforded by

about precisely what it is Verizon is requesting in the Section 251(c) context. *Compare, e.g.*, Providence Petition at 3-4, n.3 with *Omaha Forbearance Order*, 20 FCC Rcd at 19443, n.149.

[35] *See* Virginia Beach Petition at 1, n.3; Providence Petition at 1, n.3 (citing 47 C.F.R. § 51.319(a), (b), (e)).

[36] *See id.* (citing *Omaha Forbearance Order*, 20 FCC Rcd at 19439; 47 U.S.C. § 160(d)).

[37] The VSCC also points out that the Virginia Beach Petition's reliance on requesting relief comparable to that granted to Qwest obscures the actual geographic scope of the Petition, since relief was granted to Qwest only in a small minority of the wire centers it serves in Omaha. VSCC Comments at 6.

[38] *See Omaha Forbearance Order*, 20 FCC Rcd at 19449.

[39] VSCC Comments at 7.

Section 271, would severely undermine competition in the Verizon South territories. Verizon does not examine or justify this significant difference between the relief it seeks in Virginia Beach and what was granted in Omaha.

Verizon also fails to indicate any willingness to abide by the conditions the Commission placed on Qwest when it granted forbearance in Omaha. For example, the Commission conditioned forbearance from loop and transport unbundling on Qwest's agreement to provide for a six-month period for competitive LECs to transition from providing service using UNEs to alternative arrangements.[40] Verizon has not even mentioned these conditions, let alone conceded its willingness to be bound by them. This is significant given the VSCC's comments showing that Verizon is seeking to evade conditions it previously accepted as part of gaining the state of Virginia's approval for its merger with MCI.[41]

Given the lack of specificity in the Petitions and the obvious ways the requested relief differs from that granted in Omaha, Commission precedent requires that Verizon's Section 251(c) requests be dismissed.[42] Indeed, attempting to deduce what Section 251(c) relief Verizon actually is seeking would require the Commission to "comb through its rules to infer

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[40] *Omaha Forbearance Order*, 20 FCC Rcd at 19453. The Commission also conditioned forbearance from enforcing a number of dominant carrier regulations on Qwest's agreement to be governed by the tariffing and other service rules applicable to non-dominant carriers. *See id.* at 19429, 19432, 19434, 19435, 19436, 19437 n.123, 19438. The Commission also adopted comprehensive conditions designed to guarantee the ongoing availability of UNE loops and transport through commercially negotiated agreements in the *Anchorage Forbearance Order*, ¶ 39. To encourage negotiation of forward-looking commercial agreements, the Commission established the terms and conditions ACS makes available in Fairbanks as the governing terms during the negotiation process.

[41] VSCC Comments at 4-5.

[42] *See Omaha Forbearance Order*, 20 FCC Rcd at 19424-25 & n.51 (citing Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, *Memorandum Opinion and Order*, 17 FCC Rcd 27000, 27005-06 (2002)).

which . . . regulations are encompassed in [Verizon's] general request,"[43] which the Commission has explained it will not do.

If the Commission does elect to consider Verizon's requests, it should construe the Petitions narrowly to request forbearance only from the three sections of the Commission's unbundling rules that are enumerated in the Petitions.[44] In that case, the Commission also should confirm that all of Verizon's other Section 251(c) obligations remain intact.[45]

B. Verizon's Evidentiary Showing Does Not Satisfy the Commission's Standards.

One key flaw in Verizon's showing in both the Virginia Beach and Providence MSAs is its reliance on E911 data to demonstrate its competitors' market share and facilities deployment. Verizon's reliance on E911 is both improper and misplaced. Using E911 data in this context is improper because doing so violates Section 222 of the Communications Act and interconnection agreements that guarantee that carriers' proprietary information provided to E911 providers will not be used for competitive advantage.[46] The Commission has been fully briefed on this issue, and Cox will not reargue the matter here.[47]

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[43] *Omaha Forbearance Order*, 20 FCC Rcd at 19425, n.51.

[44] Virginia Beach Petition at 1, n.3; Providence Petition at 1, n.3 (requesting relief from 47 C.F.R. § 51.319(a), (b), (e)).

[45] *See Anchorage Forbearance Order*, n.70 (noting the continued applicability of ACS's 251(c)(3) obligations other than the limited loops and transport unbundling relief specifically granted).

[46] *See* 47 U.S.C. § 222; *see also* ACN Communications Service, *et al.*, Motion to Dismiss, WC Docket No. 06-172 (filed October 16, 2006); Comptel's Comments in Support of Motion to Dismiss, WC Docket No. 06-172 at 2-5 (filed October 30, 2006).

[47] Pleading Cycle Established for Comments on Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order and Motion to Dismiss, *Public Notice*, WC Docket No. 06-172, DA-2056 (released October 18, 2006); Comments of Cox Communications, Inc. on Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order and Motion to Dismiss, filed October 30, 2006, at 2-6 ("Cox October 30 Comments"). *See also* Ex

As Cox and other competitive LECs have demonstrated, the Commission should sanction Verizon for its conduct and should not allow Verizon to rely on the E911 data it presented in the Petitions.[48]

Regardless of whether Verizon is permitted to rely on E911 data, its decision to rely entirely on that data is misplaced because that data does not satisfy the standards of the *Omaha Forbearance Order*. In that case, the Commission's granular approach focused on the extent of deployment of competitive facilities in individual Qwest wire centers.[49] The Commission granted Qwest relief from section 251(c) and the accompanying regulations only in wire centers where competitive facilities served a certain percentage of homes.[50] Verizon's E911 evidence does not approach that level of detail. Verizon's E911 data merely provides market-wide market share projections and estimates of the percentage of access lines served from Verizon wire centers where Cox serves customers. In the Virginia Beach Petition, for example, Verizon claims that Cox serves customers in wire centers serving **[confidential ***]** of Verizon's residential customers.[51] Verizon makes no effort to identify the wire centers where Cox provides

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Parte Letter from J.G. Harrington, Counsel for Cox Communications, to Marlene H. Dortch, FCC, WC Docket No. 06-172 (Jan. 12, 2007). The Commission should note, however, that Verizon's most recent statement of its position on this issue is that Section 222 does not apply at all because Verizon is acting as a database administrator but that somehow the statute still would bar Verizon from making marketing use of the data. *See* Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon to Marlene H. Dortch, dated February 22, 2007. The Commission should reject this up-is-down interpretation of Section 222.

[48] *See* Cox October 30 Comments at 6, 9.

[49] *Omaha Forbearance Order*, 20 FCC Rcd at 19443-45. The Commission affirmed its commitment to this granular, wire center-based approach in the *Anchorage Forbearance Order*, ¶ 16.

[50] *Omaha Forbearance Order*, 20 FCC Rcd at 19450-51 ¶ 69. *See also Anchorage Forbearance Order*, ¶¶ 31-38.

[51] Virginia Beach Petition at 5.

service or to provide evidence of the percentage of homes Cox serves in each wire center. Verizon fails to mention that Cox does not provide service in each and every wire center in the Virginia Beach MSA. Verizon provides similarly vague and incomplete data for the other competitors it identifies in each of the Petitions.[52]

Verizon's failure to provide information on a more granular basis, as is required by the *Omaha Forbearance Order* and the *Anchorage Forbearance Order* is crucially important because such information is necessary to ensure that the Commission has an accurate picture of the level of competition in particular locations. Indeed, competitive facilities are not built to mirror Verizon's wire center boundaries. Consequently, it is likely that any given competitor will serve parts of some Verizon wire centers (sometimes small parts) without providing service to the vast majority of customers in those wire centers, and that most customers in those wire centers will not have access to competitors' facilities.

Thus, Verizon has failed to provide any evidence on the facilities deployment question that the Commission deemed crucial to granting relief in the *Omaha Forbearance Order* and the *Anchorage Forbearance Order*. Without any evidence on this central point, the Commission has no basis for applying the standards developed in its previous forbearance proceedings and therefore has no guide for analyzing, let alone granting the Petitions.[53]

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[52] *See id.* at 7-11, 12, 13-15.

[53] Verizon acknowledges that it cannot provide the granular data that the Commission used in granting Qwest forbearance in Omaha, but seeks to minimize this shortcoming by claiming that the Commission does not require this evidence because "only cable companies have access to such data." Virginia Petition at 6, n.5; Providence Petition at 6, n.5. While the Commission did acknowledge Qwest's claim in the Omaha forbearance proceeding that wire-center level data is difficult to obtain, it by no means suggested that this difficulty diminished the evidentiary burden facing a party seeking forbearance. By providing no evidence on a point the Commission deemed critical in the Omaha proceeding, Verizon has failed to meet its burden of demonstrating competition in Virginia Beach and Providence on a wire center-by-wire center basis.

C. *Verizon Inappropriately Relies on Competition from Wireless Providers,* Particularly From Its Affiliate Verizon Wireless.

In both the Virginia Beach Petition and the Providence Petition, Verizon argues that the Commission should consider the extent of competition that Verizon receives from wireless providers as evidence that forbearance is appropriate.[54] There are two problems with this claim: (1) much of the "competition" from these companies comes from Verizon itself; and (2) Verizon has not demonstrated that wireless is a meaningful substitute for incumbent local telephone service in any affected market.

The first and most significant problem is that much of the claimed wireless "competition" comes from Verizon Wireless, which is managed and 55 percent owned by Verizon.[55] In other words, Verizon Wireless is no more competition to Verizon than MCI. Verizon Wireless is one of the leading providers of wireless service in the country, and publicly available figures indicate that it has a market share of more than 24 percent in the national wireless market.[56] Thus, whatever weight the Commission might ultimately give to wireless competition, it must be discounted heavily because Verizon is on both sides of the equation. Consumers choosing

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[54] Virginia Beach Petition at 7-11; Providence Petition at 7-11.

[55] *See* Verizon Communications, Inc., SEC Form 10-K, Mar. 14, 2005, at 12.

[56] *See* Cellco Partnership, SEC Form 10-K, March 14, 2006, at 38 (claiming that Verizon Wireless ended 2005 with 51,337,000 wireless customers); Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Eleventh Report*, WT Docket No. 06-17, FCC 06-142 ¶ 5 (released September 29, 2006) (estimating the U.S. wireless market to include 213 million wireless customers) ("*Eleventh CMRS Competition Report*"). Analysts estimate that Verizon Wireless's market share has grown this year and that it will become the number one U.S. wireless carrier by the third quarter of 20007. *See US Wireless Market Mid-Year Update*, Chetan Sharma Consulting, August 2006, available at http://www.chetansharma.com/2. Verizon Wireless's market share is likely to be higher than its national average in the Providence and Virginia Beach MSAs, where Verizon has been providing wireless service since the 1980s.

between Verizon landline services and Verizon Wireless is no more a reflection of a competitive market than consumers choosing between Windows for home and Windows for students – it is simply market segmentation, and an effort to maximize the number of consumers who buy Verizon's services, not to take customers from one service to another.[57]

In any event, Verizon provides no evidence that wireless service really is a meaningful substitute for landline telephone service in the current market. In practical terms, wireless is supplemental to wireline service for most local telephone customers, who maintain both services because each meets different needs. In the Omaha forbearance proceeding, the Commission specifically rejected evidence of competition from wireless providers because Qwest failed to provide any evidence that wireless service is fully substitutable for landline telephone service or that significant numbers of customers actually are making that substitution.[58] The Commission took the same approach in rejecting the insubstantial information regarding such competition in

[57] There are two reasons that wireless competition should be discounted in light of Verizon's ownership of Verizon Wireless. First, whenever Verizon's landline operation "loses" a customer to Verizon Wireless, Verizon retains that revenues from that customer. Thus, it is not actually a competitive loss or gain. This means that Verizon has little or no incentive to seek to have customers switch from Verizon's landline service to Verizon Wireless. Indeed, it would be a waste of company resources to encourage customers to switch from Verizon landline service to Verizon Wireless. Second, Verizon actively uses the affiliation between its landline and wireless businesses as a marketing tool. For instance, recent advertising campaigns have emphasized that a customer can receive telephone, Internet, wireless and video service from Verizon.

[58] *Omaha Forbearance Order*, 20 FCC Rcd at 19452. The Commission rejected evidence of competition from voice over IP providers on the same basis, *id.*, so it also should reject Verizon's attempt to portray voice over IP as a significant competitor in the Virginia Beach and Providence MSAs. Virginia Beach Petition at 12-13; Providence Petition at 12-13. In a decision released earlier this year, the Rhode Island Public Utilities Commission agreed with the Commission's refusal to consider voice over IP service as a reasonable substitute for landline telephone services. Verizon-Rhode Island's Successor Alternative Regulation Plan, *Report and Order*, Docket No. 3692 (released March 17, 2006) at 24-25. The Commission should give these market-specific conclusions substantial weight.

the Anchorage Forbearance Order.[59]

Verizon's showing in the Petitions suffers from the same obvious defects as the Qwest and ACS petitions, relying solely on vague national trends it claims suggest that an increasing number of customers may be abandoning landline service in favor of wireless.[60] The Commission rejected this argument in Omaha and Anchorage, and should reject it again here. Indeed, within the last year, the Rhode Island Public Utilities Commission concluded that "wireless is not a substitute for wireline but a complement," and found that less than six percent of wireless customers chose not to purchase landline service.[61] Thus, even if Verizon could demonstrate that unaffiliated wireless providers had significant market share in the Providence and Virginia Beach markets (and it makes no effort to do so), it would be unable to show that they had any meaningful effect on the landline local exchange service market. Under present competitive circumstances, competition from wireless providers cannot form the basis for forbearance from Verizon's Section 251(c) obligations.

D. Verizon Has Not Shown that It Should Be Relieved of the Obligation to Provide Unbundled Access to Inside Wire Subloops.

The Commission should deny the Petitions to the extent that they seek forbearance from enforcement of the inside wire subloop unbundling requirement. Verizon lists Section

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[59] *Anchorage Forbearance Order*, ¶ 29 (rejecting argument that interconnected voice over IP and wireless services are substitute services in the Anchorage study area).

[60] Virginia Beach Petition at 11; Providence Petition at 11

[61] Verizon-Rhode Island's Successor Alternative Regulation Plan, *Report and Order*, Docket No. 3692 (released March 17, 2006). The Rhode Island Public Utilities Commission's decision was based in part on citations to the Commission's finding in the *Tenth CMRS Competition Report* that 5.5 percent of households no longer maintained landline telephone service. Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Tenth Report*, 20 FCC Rcd 15908, 15979-80 (2005). The Commission noted in its

51.319(b), which includes the inside wire subloop unbundling requirement, as one of the rules for which it seeks forbearance, but never explains why removing this obligation would be consistent with the Section 10 forbearance criteria.[62] In short, the Petitions provide no basis for granting Verizon's request for relief from its unbundled inside wire subloop obligations.

As the Commission has recognized, access to inside wire subloops is critical to the ability of facilities-based carriers like Cox to serve customers in MTEs because "requiring competitive LECs to convince landlords and customers to permit construction of redundant inside wiring would substantially impede market entry and competition."[63] This recognition led the Commission to determine that entry into the market to serve customers in MTEs would be impaired for competitive LECs nationwide if incumbent LECs were not required to offer unbundled access to inside wire subloops.[64] The problem is particularly acute for facilities-based carriers like Cox because

> [i]f competitors can only get as far as the building or property line MPOE with their own facilities because they are prohibited from installing their own customer premises wiring to reach a customer at that premises, the incumbent LEC's inside wire subloop . . . may be the exclusive means of reaching an end user. Often, there is no alternative inside wiring other than the incumbent LEC's available at the premises.[65]

Eleventh CMRS Competition Report that the figure had risen to 8 percent by the end of 2005. FCC 06-142, ¶ 205.

[62] Providence Petitions at 3, n.3; Virginia Beach Petition at 3, n.3; 47 C.F.R. § 51.319(b).

[63] *See* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order and Fourth Notice of Proposed Rulemaking*, 15 FCC Rcd 3696, 3793 (2000) ("*2000 UNE Remand Order*").

[64] *See Triennial UNE Order*, 18 FCC Rcd at 17193.

[65] *See id.*

In other words, the result of cutting off Verizon's inside wire subloop unbundling obligations in the markets covered by the Petitions would be to ensure that incumbent LECs control access to – and thereby competition in – MTEs.

Maintaining unbundled access to inside wire subloops is important even in markets like Virginia Beach where Cox currently does not make extensive use of those facilities. The Commission has noted in the past that in Virginia, premises owners often own the inside wiring in MTEs.[66] Nonetheless, the Commission recognized in the *Virginia Arbitration Order* that it remains important for competitive LECs to retain full unbundled access to inside wire subloops in those buildings where the incumbent LEC *does* own the wiring.[67] This course ensures that all MTE customers have access to competitive services.

In the *Anchorage Forbearance Order*, the Commission recognized the importance of maintaining competitive LEC access to inside wire subloops and NIDs, specifically exempting such access from the loop unbundling relief it granted to ACS.[68] The Commission noted ACS's failure to demonstrate that competitive LECs are able to effectively compete for MTE customers without access to inside wire subloops and NIDs in those buildings.[69] Maintaining competitive

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[66] *See* Petition of WorldCom, et al., *Memorandum Opinion and Order*, 17 FCC Rcd 27039, 27242 (2002) (the "*Virginia Arbitration Order*").

[67] *Virginia Arbitration Order*, 17 FCC Rcd at 27244. The specific issue that the Commission addressed in the *Virginia Arbitration Order* was whether competitive LECs should have direct access to the network interface device ("NID") when they purchase inside wire subloops on an unbundled basis from incumbent LECs. The Commission granted direct access, which, coupled with previous Commission precedent in the *Triennial UNE Order*, made clear that direct access was part of the purchase of the unbundled inside wire subloop, not a separate purchase of unbundled access to the NID. 18 FCC Rcd at 17185 & n.1013, 17199.

[68] *Anchorage Forbearance Order*, ¶ 24.

[69] *See id.* The Commission distinguished this outcome from the result in the *Omaha Forbearance Order*, which apparently included inside wire subloop unbundling in the relief granted to Qwest. *See id.* at n.78; *see also Omaha Forbearance Order*, 20 FCC Rcd 19443 n.149. Regardless of the outcome in Omaha, where the inside wire subloop issue was not

LEC access to MTEs therefore requires that the Commission follow the same approach it used in the *Anchorage Forbearance Order* by denying Verizon's request for forbearance from its inside wire subloop unbundling responsibilities. As described above, the Commission has affirmed repeatedly that competitive LEC market entry into MTEs is impaired on a nationwide basis without access to inside wire subloops.[70] Absent specific individual market-based information showing vigorous competitive LEC entry into MTEs using their own inside wiring facilities, the Commission should resist granting any incumbent forbearance relief for inside wire subloops. Verizon has provided no such evidence in either of the Petitions.

It is particularly important that the Commission continue to supervise this issue closely and exercise its federal authority in this area because competitive LEC access to MTEs already has been shown to be vulnerable at the local level to changes in state policies and incumbent LEC manipulation of interconnection agreements. Cox brought this issue to the Commission's attention last year in a petition for declaratory ruling seeking to undo actions of the Oklahoma Corporation Commission that contradicted the Commission's rules and has made competitive entry into MTEs in Oklahoma considerably more difficult and expensive.[71] Cox's Inside Wire Petition cited similar disputes over access to inside wire subloops in other states,[72] and since Cox filed the Petition, additional disagreements have arisen in other states. Strong Commission

discussed or raised in the record, in this proceeding, the evidence shows that the appropriate approach is to ensure continued competitive access to inside wire subloops.

[70] *Triennial UNE Order*, 18 FCC Rcd 16978.

[71] *See* Petition for Declaratory Ruling of Cox Communications, Inc, WC Docket No. 01-338 (filed October 27, 2004) (the "Inside Wire Petition"); Pleading Cycle Established for Comments on Cox's Petition for a Declaratory Ruling, for Clarification of the Commission's Rules and Policies Regarding Unbundled Access to Incumbent Local Exchange Carrier's Inside Wire Subloop, *Public Notice*, WC Docket No. 01-338, DA 04-3520 (released November 4, 2004).

[72] Inside Wire Petition at 16-18.

action in this and other proceedings is the only way to ensure that competitive LECs have sufficient access to MTEs to guarantee the benefits of competition for the many Americans who live in MTEs.

In this case, as in Anchorage, the issue is clear cut. Verizon has provided no evidence that competitive LECs have any alternative to using incumbent LEC inside wire subloops in MTEs. Verizon has provided no evidence that competitive LECs have made significant inroads into signing up MTE customers without using Verizon's inside wire subloops. Verizon has failed, therefore, to satisfy Section 10's requirement that it demonstrate that forbearance will not lead to unjust or discriminatory practices, inadequate consumer protections, or damage to the public interest. The Commission should follow the same approach it used in the *Anchorage Forbearance Order* and deny Verizon's request for inside wire subloop forbearance and reaffirm the importance of competitive LEC access to those facilities.

IV. The Petitions Include Serious Factual Errors About the Virginia Beach and Providence Markets, Which Lead It to Greatly Overstate Competitive Entry.

In addition to the evidentiary failures described above, the Petitions rely on faulty evidence and make a wide range of erroneous factual claims about the Virginia Beach and Providence MSAs. These errors demonstrate the weakness of Verizon's case and provide more than sufficient reason to conclude that Verizon has not justified forbearance from its Section 251(c) obligations.

A. Verizon Has Not Shown That It Faces Competition Throughout the Virginia Beach MSA.

Verizon seeks forbearance from regulation over the entire area of the Virginia Beach MSA based on the undemonstrated assertion that it is subject to competition throughout that area. As the Commission held in the *Omaha Forbearance Order* and the *Anchorage*

Forbearance Order, in the absence of a demonstration that there is significant actual deployment of competitive facilities in a portion of a market, forbearance cannot be granted in that area.[73] Verizon's factual showing for the Virginia MSA simply fails to meet that standard.

1. Verizon's Account of Mass-Market Competition from Cox Overestimates the Availability of Cox Telephone Services.

Verizon claims that Cox competes with it throughout the Virginia Beach MSA.[74] That claim is wrong for two reasons: (1) Cox does not have any facilities at all in parts of the MSA; and (2) Cox does not provide telephone service in all of the communities where it does have cable facilities.

Initially, Verizon overstates Cox's market presence by ignoring those portions of the MSA where Cox does not provide any service at all. Cox provides telephone service only where it is the franchised cable operator. While Cox has the largest presence of any cable operator in the MSA, it is not ubiquitous. In fact, Cox estimates that there are at least five franchise areas in the Virginia Beach MSA that Cox does not serve. These franchise areas account for a significant fraction of the geographic area and population of the MSA. While Verizon claims that Cox passes approximately 98 percent of the homes in the Virginia Beach MSA, Cox's records indicate that number is overstated. In reality, Cox's cable network passes only about **[confidential***]** of the households in the Virginia Beach MSA.

In addition, Cox does not provide telephone service to every household in every franchise area where it offers cable service. In Gloucester County, Virginia, Cox does not provide telephone service to a significant portion of its franchise area. There are also certain

[73] *Omaha Forbearance Order*, 20 FCC Rcd at 19444-45; *Anchorage Forbearance Order*, ¶ 21.

[74] Virginia Beach Petition at 4. Specifically, Verizon claims Cox's cable systems pass 98% of the homes in the Virginia Beach MSA.

communities in the Virginia Beach MSA that are located in northern North Carolina. Cox does not provide cable or telephone service in those communities; in fact, Cox does not even hold a certificate of public convenience and necessity to provide telephone service in North Carolina.[75] While Verizon does not provide incumbent local exchange service in all of the North Carolina portions of the Virginia Beach MSA, Verizon's failure to acknowledge that Cox does not provide telephone service everywhere in the MSA, or even everywhere Cox provides cable service demonstrates that Verizon is unwilling to provide the Commission with accurate information.

2. Verizon Essentially Makes No Showing of Mass-Market Competitors Other Than Cox.

Verizon's attempt to show that competitors other than Cox are gaining a foothold in the Virginia Beach MSA also provides no basis for forbearance. As described above, the competitors other than Cox that Verizon identifies – chiefly wireless carriers and voice over IP providers – have previously been held by the Commission to be irrelevant to forbearance determinations.[76]

Verizon also cites Cavalier's a facilities-based provider of traditional wireline telephone service, but the limited facilities-based service Verizon claims Cavalier provides adds little support to Verizon's request for forbearance. Verizon alleges that "Cavalier provides service . . .

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[75] Cox was authorized to provide service until May 2006, but its certificate of authority was transferred as part of the sale of Cox's cable systems in other parts of North Carolina. *See* Notice of Streamlined Domestic 214 Applications Granted, *Public Notice*, WC Docket No. 05-350, DA 06-921 (released April 24, 2006). In any case, Cox's North Carolina certificate was not granted to provide service to the North Carolina portions of the Virginia Beach MSA, but rather for service to Rocky Mount, North Carolina.

[76] *See Omaha Forbearance Order*, 20 FCC Rcd 19452; *Anchorage Forbearance Order*, ¶ 24. As the VSCC also notes, granting Verizon forbearance from its loop and transport unbundling

in whole or in part using its own facilities, including in all cases its own switch."[77] *This,* however, is a deceptive description because Cavalier relies heavily on UNEs from Verizon. If Verizon wins forbearance from providing loops and transport at UNE prices, Cavalier's cost of doing business will increase dramatically, possibly resulting in a retreat from the Virginia Beach MSA.[78] There is, therefore, no basis for considering Cavalier's operations in the context of this proceeding.

3. Verizon's Claims Regarding Cox's Success in the Enterprise Market Are Wildly Inflated.

Verizon's discussion of enterprise market competition from Cox suffers from the same defects as its discussion of mass-market competition. In addition, Verizon vastly overstates both Cox's capabilities and its success in the enterprise market in the Virginia Beach MSA. While Verizon indicates that Cox has **[confidential***] business 911 listings as of December 2005 – implying that Cox serves that many business lines in the market[79] – as of October 2006 Cox actually served only **[confidential***]** and **[confidential***]**. This clearly shows how unreliable Verizon's E911 evidence is, particularly for analyzing the enterprise market.

Verizon also selectively quotes Cox's business services web sites to make it appear as though Cox has publicly stated that it serves over 100,000 business customers in the Virginia

obligations could undermine the ability of many parties to provide the broadband services that are necessary to the growth of voice over IP services. VSCC Comments at 7-8.

[77] *See* Virginia Beach Petition at 15.

[78] This is not idle speculation. As the Commission knows, the relief granted to Qwest in Omaha has forced one of the best-equipped facilities-based competitors to curtail operations and consider exiting the market. Letter from Chris MacFarland, Group Vice President – Chief Technology Officer, McLeod USA to Marlene H. Dortch, dated December 15, 2006.

[79] *See* Virginia Beach Petition, Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the Virginia Beach Metropolitan Statistical Area at 23.

Beach MSA.[80] *Cox's reference to serving over 100,000 business customers is an estimate for* Cox's nationwide business services unit as a whole, not for the Virginia Beach market.[81] Thus, Verizon's claims regarding enterprise competition from Cox are at best unreliable and at worst willfully misleading. In either case, the Commission cannot rely on them to grant Verizon forbearance from loop and transport unbundling for the enterprise market in the Virginia Beach MSA.

4. Verizon's Evidence of Enterprise Market Competitors Other than Cox Is Vague, Irrelevant, and Unreliable.

Verizon's other evidence of enterprise market competition in the Virginia Beach MSA is either irrelevant or too vague to be of any use. Verizon cites multiple providers of "competitive fiber networks,"[82] but it fails to explain who owns these networks, whether they use them (or lease them to other providers) to provide enterprise telephone service, or, if so, how many customers are served by these networks.[83] Verizon makes much of the assertion that these "competitive fiber networks" reach significant portions of Verizon's wire centers and retail enterprise customers,[84] but again, provides no information about the impact of these networks on actual business service competition in the market. Without additional information, Verizon

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[80] *See* Virginia Beach Petition at 19.

[81] *See* Cox Business Services, *About Us*, http://www.coxbusiness.com/aboutus/.

[82] *See* Virginia Beach Petition at 20.

[83] Moreover, as the VSCC explains, the state's most recent analysis of competition in the fiber-based special access market indicated that the Verizon/MCI merger would harm competition for those services, and no significant new competitors have entered the market since then. VSCC Comments at 5. The Commission also should note the VSCC's statement that Verizon is refusing to comply with the conditions the VSCC imposed in an attempt to ameliorate the competitive damage caused by the merger. *Id.* at 4-5.

[84] *See id.*

cannot claim that these alleged additional competitors are relevant to the Virginia Beach enterprise market.

Similarly, Verizon claims that additional "traditional telecom carriers," "managed service providers," and "systems integrators" contribute to competition in the Virginia Beach MSA.[85] It fails, however, to give any details about how much coverage of the Virginia Beach MSA any of these competitors actually provides or how many customers they serve. Moreover, many of these supposed competitors – particularly systems integrators – provide no telecommunications services of their own, but merely combine other parties' services with non-telecommunications components. Even when Verizon does provide statistics for aggregate coverage and E911 listings for "competing carriers" that "were using their own switches to serve business lines" in the Virginia Beach MSA, it provides no information about how it derived these figures or even which competitors it is counting. This data is too vague to be of any use to the Commission and cannot form the basis for a grant of forbearance.

B. Verizon Mischaracterizes Competition in the Providence MSA.

1. Verizon Has Not Demonstrated Robust Residential Retail Competition in the Providence MSA.

Competition in the Providence MSA also is not as robust as Verizon would have the Commission believe. Verizon's Petition and accompanying declarations are replete with attempts to paint a picture of wide ranging competition in the Providence MSA. In fact, Verizon remains the dominant provider with the vast majority of both retail and enterprise lines in the MSA, and it has not provided sufficient evidence to justify forbearance from its section 251(c) obligations there.

[85] Virginia Petition at 21.

First, the assessment of competition in the retail market presented in the Providence Petition reflects the same evidentiary flaws as the Virginia Beach Petition, including an undue reliance on wireless and voice over IP competition, improper citation to E911 data, and jumbled references to other purported competitors of questionable relevance.[86] For example, Verizon seeks to rely on the small number of customers in Rhode Island taking service from competitive LEC facilities-based providers and resellers as evidence of competition.[87] The penetration levels of non-cable competitive LECs are not evidence of competition but rather evidence that Verizon still can stifle competitors that rely on access to Verizon facilities. Once the chaff is swept away, it is clear that Verizon faces meaningful mass-market competition only from Cox (in Rhode Island) and Comcast (in Massachusetts).[88]

Verizon's evidence concerning the competition supplied by Cox and Comcast demonstrates a key flaw in the Providence Petition – its over-reliance on generalized competitive data. Verizon seeks to rely on market-wide competitor penetration figures, even though it acknowledges that Cox and Comcast do not have overlapping service areas.[89] This data is too general to permit the Commission to perform the granular, wire-center-based analysis called for by the *Omaha Forbearance Order* and the *Anchorage Forbearance Order*.

In the Providence Declaration, Verizon provides limited information about its claims

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[86] *See supra* Sections III.B, III.C, and IV.A.2.

[87] *See* Providence Petition at 14.

[88] The Rhode Island Public Utilities Commission has acknowledged that resellers and facilities-based CLECs no longer provide any meaningful competition for Verizon in Rhode Island and concluded that "in the residential market, VZ-RI is primarily competing with one full facilities-based CLEC, Cox." Verizon-Rhode Island's Successor Alternative Regulation Plan, *Report and Order*, Docket No. 3692 (released March 17, 2006) at 26 ("*2006 Alternative Regulation Order*").

[89] Petition at 5-6.

regarding Cox's market coverage and penetration in the areas Cox serves.[90] This data does not help Verizon's case, however, because it provides no insight into Cox's actual facilities deployment in individual Verizon wire centers. Like Qwest's original petition in the Omaha proceeding, Verizon simply provides market-level data and asks for forbearance from regulation in the whole market. After the *Omaha Forbearance Order* and the *Anchorage Forbearance Order*, such relief is unavailable.

Furthermore, the Cox-specific information Verizon does supply does not support market-wide forbearance or forbearance in any particular Verizon wire center.[91] Verizon indicates that there are 670,000 households in the Providence MSA. Verizon claims that Cox's network passes 350,000 of those homes,[92] but it makes no demonstration of the deployment of Cox's facilities or the extent to which Cox's facilities coincide with Verizon's wire centers.[93] Though Verizon alleges that Cox actually serves **[confidential***]** local voice customers, that figure is meaningless without some exploration of where those customers are located or where Cox's facilities actually are deployed. As a result, there is no basis for granting Verizon any forbearance relief, let alone the market-wide relief from its Section 251(c) obligations for residential market services Verizon requests.

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[90] Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition at ¶ 17 (the "Providence Declaration").

[91] *Compare id. with id.* at ¶¶ 7, 16.

[92] *Id.* at ¶¶ 6-7.

[93] Verizon does provide a map of Cox's Rhode Island franchise area, but that map does not illustrate actual facilities coverage. Providence Declaration at Exhibit 3.

2. Cox's Presence in the Providence Enterprise Market is Growing, but Still Limited.

Verizon's attempt to show competition in the enterprise market also falls short of justifying forbearance. Verizon relies on irrelevant facts, overstates Cox's market share and otherwise distorts the data.

First, Verizon claims that Cox has had "strong success in the mass market."[94] This is irrelevant to enterprise market issues. Second, despite Verizon's claims, Cox's presence in the Providence enterprise market remains limited. To date, Cox serves only about **[confidential ***]** business voice customers in the Providence MSA – a tiny number in comparison to the size and scope of Verizon's **[confidential***]** business lines in the market. Here again, Verizon's estimate greatly overstates Cox's market penetration.[95] Moreover, the vast majority of Cox's business customers are small businesses and large enterprises. In other words, while Verizon makes much of Cox's "ubiquitous network," it presents no evidence at all that customers are abandoning Verizon's enterprise services in favor of those offered by Cox or Comcast.

Verizon also overstates the impact of other competitive LECs that rely on inputs from Verizon, such as access to UNE loops or DS1/DS3 special access arrangements.[96] When the Rhode Island PUC granted Verizon pricing flexibility in 2003, it relied on the choices offered by no less than six competing CLECs that used their own switches combined with access to Verizon's loops and transport facilities.[97] Since that time, many of these CLECs have stopped competing against each other entirely, and have instead merged their existing network and

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[94] Providence Petition at 18.

[95] Providence Declaration at 24.

[96] Providence Petition at 21-24.

[97] *Alternative Regulation Order* at 47.

customers. For instance, three CLECs, Conversent Communications, LLC, CTC Communications and Choice One Communications completed a merger in July 2006 to form One Communications. This has effectively cut the number of UNE based CLECs in Rhode Island from six to four. And it remains in doubt, with rising prices and limits on availability for the network elements they use, whether these remaining CLECs can survive.[98]

Verizon's attempt to show competition in the enterprise market by using fiber maps is equally futile. Such maps can easily overstate the potential for competition. As the Commission has found:

> We recognize, however, that one must take care in interpreting such maps. For example, in the *Triennial Review Remand* Order, we expressed reluctance to rely on these sort of maps in the context of loop unbundling because "they fail to indicate the capacity of service being provided over the facilities described, or whether those facilities are in fact being used to provide services for which competitive LECs may use UNEs." In addition, the MSA-level maps did not correspond to the wire center analysis the Commission conducted.[99]

Consequently, the mere existence of fiber facilities in the Providence MSA does not demonstrate actual competition or act as a predictor of the magnitude of competition. Reliance on this evidence to grant forbearance in the enterprise market before competition warrants it is likely to result in a great diminishment of competition in the market.

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[98] The national trends also are not encouraging. The FCC's most recent trends in the Telephone Report shows that the number and percentage of incumbent LEC switched access lines that are provided by UNE-based CLECs continue to decline. Industry Analysis and Technology Division, *Wireline Competition Bureau, Local Telephone Competition: Status as of December 31, 2005* (July 2006) (reporting decline in total number of competitive LEC switched access lines and number of competitive LEC lines served using unbundled loops and switching).

[99] *Verizon Communications Inc. and MCI, Inc.*, 20 FCC Rcd 18433 n.123 (citing *Triennial Review Remand Order*, 20 FCC Rcd at 2621 & n.445).

Thus, the evidence Verizon relies upon to demonstrate enterprise competition in Providence is just as unpersuasive as the evidence it uses to support its claims of residential market competition. Verizon's request therefore should be rejected.

V. The Commission Should Grant Verizon Relief from Dominant Carrier Status Only Under Longstanding Non-Dominance Precedent.

Cox does not object to Verizon's request that it be treated as a non-dominant carrier for the purposes of federal regulation in the provision of its mass-market services in Virginia Beach and Providence.[100] Verizon's showing regarding its declining retail market share and competition from facilities based-providers like Cox likely would preclude a finding that Verizon continues to exercise the kind of market power the Commission had in mind when it established the dominance/nondominance distinction in the Competitive Carrier proceeding.[101] The Commission, however, should not allow Verizon to obtain non-dominant carrier status through the back door by forbearing from dominant carrier regulations as Verizon requests.[102] Instead,

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[100] Verizon seeks treatment as a non-dominant carrier through forbearance requests that cover the range of dominant carrier regulation. Virginia Beach Petition at 3 n.3; Providence Petition at 3 n.3.

[101] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations, *Notice of Inquiry and Proposed Rulemaking*, 77 FCC 2d 308 (1979); *First Report and Order*, 85 FCC 2d (1980); *Further Notice of Proposed Rulemaking*, 84 FCC 2d 445 (1981); *Second Further Notice of Proposed Rulemaking*, FCC 82-187, 47 Fed. Reg. 17,308 (1982); *Second Report and Order*, 91 FCC 2d 59 (1982); *Order on Reconsideration*, 93 FCC 2d 54 (1983); *Third Further Notice of Proposed Rulemaking*, 48 Fed. Reg. 28,292 (1983); *Third Report and Order*, 48 Fed. Reg. 46,791 (1983); *Fourth Report and Order*, 95 FCC 2d 554 (1983), *vacated, AT&T v. FCC*, 978 F2d 727 (D.C. Cir. 1992), *cert. denied, MCI Telecommunications Corp. v. AT&T*, 113 S Ct 3020 (1993); *Fourth Further Notice of Proposed Rulemaking*, 96 FCC 2d 1191 (1984); *Fifth Report and Order*, 98 FCC 2d 1191 (1984); *Sixth Report and Order*, 99 FCC 2d 1020 (1985), *vacated, MCI Telecommunications Corp. v. FCC*, 765 F2d 1186 (D.C. Cir. 1985).

[102] The Commission granted Qwest limited forbearance from some dominant carrier regulation of its mass-market services in the *Omaha Forbearance Order*, applying a forbearance analysis that was "informed by the Commission's traditional market power analysis." 20 FCC Rcd

the Commission should require Verizon to request a declaratory ruling that it is a non-dominant carrier for mass-market services in the markets covered by the Petitions and to make the showings necessary to demonstrate that it does not, in fact, continue to exercise market power in the geographic and product markets included in the Petitions.[103]

Regardless of how it treats Verizon's request for non-dominance treatment, it should not grant Verizon's request for the enterprise market, because Verizon has not requested such relief. The Commission denied this relief to Qwest,[104] and Verizon is seeking "substantially the same" relief as that granted to Qwest. Moreover, the Petitions do not state that Verizon is requesting non-dominant treatment for enterprise services. Given the Commission's clear statements in the *Omaha Forbearance Order* that it will grant only requests that are clearly made,[105] and given Verizon's statement that it requests "substantially the same relief" as that granted to Qwest,[106] there is no reason for the Commission to consider non-dominant treatment for Verizon's enterprise market services. The Commission therefore should restrict its dominance/non-dominance analysis to Verizon's mass-market service offerings.

19425. The more extensive relief from dominant carrier regulation sought by Verizon in this case warrants the closer attention to the market power question provided by the Commission's traditional dominance/non-dominance analysis.

[103] *See, e.g.*, Comsat Corporation, *Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 14083 (1998); Motion of AT&T Corp. to Be Reclassified as a Non-Dominant Carrier, *Order*, 11 FCC 3271 (1995).

[104] *Omaha Forbearance Order*, 20 FCC Rcd 19426.

[105] *See* n.32, *supra*.

[106] Providence Petition at 1 (citing Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, *Memorandum Opinion and Order*, 20 FCC Rcd 19415 (2005) ("*Omaha Forbearance Order*")); Virginia Beach Petition at 1 (citing same).

VI. Conclusion

Verizon has not provided the Commission with sufficient evidence to grant it the forbearance sought by the Petitions. For that reason and for the other reasons described herein, Cox requests that the Commission resolve this proceeding consistent with these comments.

Respectfully submitted,

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March 5, 2007

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CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow Lohnes PLLC, do hereby certify that on this 5th day of March, 2007, copies of the foregoing Comments of Cox Communications, Inc. were served via hand delivery or first-class mail postage prepaid (denoted by *), to the following:

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